REVISED STATUTES

OF THE

STATE OF MAINE

1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 1

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

states so acting when it has been enacted into law by any 2 states from among the states of New England. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

Article VIII. Withdrawal and Termination.

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to this compact.

Article IX. Other Arrangements Unaffected.

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability.

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1961, c. 197.)

Sec. 3. Powers.—The commissioner of mental health and corrections is authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular and he may in his discretion delegate this authority to the warden of the Maine state prison. (1961, c. 197.)

Chapter 28.

Tri-State Authority.

Secs. 1-13. Repealed by Public Laws 1961, c. 196.

Chapter 29.

Maine Employment Security Law.

Construction and purpose.—The Maine employment security law is remedial and must be liberally construed for the purpose of accomplishing its objectives—the stabilization of employment conditions and the amelioration of unemployment. Stewart v. Maine Employment Security Comm., 152 Me. 114, 125 A. (2d) 83; Malloch v. Maine Employment Security Comm., 159 Me. 105, 188 A. (2d) 892.

Not intended to provide financial aid for prosecution and support of labor dispute. — The Maine employment security law was never intended to lend itself as a

medium through which financial aid would be provided for the prosecution and support of a labor dispute. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

Statement of Policy and Title of Chapter.

Sec. 1. Statement of policy.—Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which may fall upon the unemployed worker, his family and the entire community. The achievement of social security requires protection against this greatest hazard of our economic life. This objective can be furthered by operating free public employment offices in affiliation with a nation-wide system of public employment services; by devising appropriate methods for reducing the volume of unemployment; and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power, promoting the use of the highest skills of unemployed workers and limiting the serious social consequences of unemployment. (R. S. c. 24, § 1. 1949, c. 430, § 1. 1957, c. 381, § 1.)

Effect of amendment. — The 1957 amendment rewrote this section.

Construction.—In construing the employment security law, the broad objectives of this section must be kept in mind. Hasco Mfg. Co. v. Maine Employment Security Comm., 158 Me. 413, 185 A. (2d) 442.

Quoted in Malloch v. Maine Employment Security Comm., 159 Me. 105, 188 A. (2d) 892.

Definitions.

Sec. 3. Definitions.

I. "Agricultural labor" includes all services performed:

A. On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wild life.

B. In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

C. In connection with the production or harvesting of maple syrup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Federal Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes.

D. In handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structure used primarily for the raising of agricultural or horticultural commodities, and orchards. (1957, c. 381, § 2. 1959, c. 222)

IX. "Employer" means:

A. Prior to January 1, 1956, any employing unit which for some portion of a day, but not necessarily simultaneously, in each of 20 different weeks, whether or not such weeks are or were consecutive, within any calendar year, has or had in employment 8 or more individuals, irrespective of whether the same individuals are or were employed in each such day; (1955, c. 421, § 1. 1957, c. 381, § 3)

A-1. On and after January 1, 1956, any employing unit which for some portion of a day, but not necessarily simultaneously, in each of 20 different weeks, whether or not such weeks were consecutive, within a calendar year starting with 1955, had in employment 4 or more individuals, irrespective of whether the same individuals are or were employed in each such day. However, no contributions shall be payable from those employers covered by this paragraph for the calendar year 1955; (1955, c. 421, § 1. 1957, c. 381, § 4)

E. Any employing unit not an employer by reason of any other paragraph of this subsection, for which within either the current or preceding calendar year service in employment is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; (1947, c. 375, § 12. 1955, c. 421, § 2)

XI.

F.

2. Service performed in the employ of the United States government or an instrumentality of the United States immune under the constitution of the United States from the contributions imposed by the provisions of this chapter, except that on and after January 1, 1940, to the extent that the Congress of the United States has permitted states to require any instrumentalities of the United States to make payments into an unemployment compensation fund under a state unemployment compensation or employment security law, all of the provisions of this chapter shall be applicable to such instrumentalities and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this state shall not be certified for any year by the Secretary of Labor under section 3304 of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commission from the fund in the same manner and within the same period as is provided in subsection IV of section 19 with respect to contributions erroneously collected; (1951, c. 204, § 2. 1957, c. 381, § 5)

10. Services performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions; and any services performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the constitution of the United States from the tax imposed by section 3301 of the Federal Internal Revenue Code; (1957, c. 381, § 6)

11. Service performed in any calendar quarter in the employ of any or-

ganization exempt from income tax under section 501 of the Federal Internal Revenue Code, if:

a. The remuneration for such service is less than $50, or

b. Such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order or association and is performed away from the home office, or is ritualistic service in connection with any such society, order or association, or

c. Such service is performed by a student who is enrolled and is regularly attending classes at a school, college or university; (1951, c. 204, § 3. 1957, c. 381, § 7)

12. Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 501 of the Federal Internal Revenue Code; (1957, c. 381, § 7)

15. Service performed in any calendar quarter in the employ of a school, college or university, not exempt from income tax under section 501 of the Federal Internal Revenue Code, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university; (1951, c. 204, § 4. 1957, c. 381, § 8)

XVI. State. "State" includes, in addition to the states of the United States of America, Puerto Rico and the District of Columbia.

XVII. Unemployment, total and partial. "Unemployment, total and partial," means:

A. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to him and during which he performs no services, except that any amounts received from the federal government by members of the national guard and organized reserve, including base pay and allowances, or any amounts received by volunteer firemen, shall not be deemed wages for the purpose of this subsection. (1953, c. 323, § 1. 1957, c. 344, § 1; c. 447, § 1. 1963, c. 413, § 1.)

B. An individual shall be deemed "partially unemployed" in any week of less than full-time work if his wages payable from any source for such week are less than the weekly benefit amount he would be entitled to receive if totally unemployed and eligible, except that any amounts received from the federal government by members of the national guard and organized reserve, including base pay and allowances, or any amounts received by volunteer firemen, shall not be deemed wages for the purpose of this subsection. (1951, c. 204, § 6. 1953, c. 323, § 1. 1957, c. 344, § 1; c. 447, § 1. 1963, c. 413, § 1.)

C. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe. (1963, c. 413, § 1.)

XIX.

D. The amount of any payment, other than vacation or sick pay, made after January 1, 1958, to an individual after the month in which he attains the age of 65, if he did not perform services for the employing unit in the period for which such payment is made. (1951, c. 204, § 9. 1957, c. 381, § 9)

XXII. Regular employment. "Regular employment" means work at the individual's customary trade, occupation, profession or business as opposed to temporary or odd job employment outside of such customary trade, occupation, profession or business. [1961, c. 361, § 12. 1963, c. 413, § 2]. (R. S. c. 24, § 19. 1947, c. 375, §§ 5, 6, 8, 9, 10, 12, 14. 1949, c. 420, § 12; c. 430, § 1. 1951 c. 204, §§ 1, 2, 3, 4, 5, 6, 7, 8, 8-A, 9. 1953, c. 7; c. 323, § 1. 1955, c. 421, §§ 1, 2. 1957, c. 344, § 1; c. 381, §§ 2-9; c. 447, § 1. 1959, c. 222. 1961, c. 170, § 1; c. 361, § 12. 1963, c. 413, §§ 1, 2.)

Effect of amendments. — The 1955 amendment added the words "Prior to January 1, 1956" at the beginning of paragraph A of subsection IX, added paragraph A-1 of subsection IX and rewrote paragraph E of subsection IX.

The first 1957 amendment deleted clauses excepting holiday pay from paragraphs A and B of subsection XVII. The second 1957 amendment rewrote subsection I, substituted "any year" for "either the current or the preceding year" in paragraph A of subsection IX, rewrote paragraph A-1 of subsection IX, changed the references to the Federal Internal Revenue Code in subparagraphs 2, 10, 11, 12 and 15 of paragraph F of subsection XI, and rewrote paragraph D of subsection XIX. The third 1957 amendment amended paragraphs A and B of subsection XVII by adding an exception clause at the end of each paragraph.

The 1959 amendment eliminated the changes previously made in subsection I by P. L. 1957, c. 381, § 2, and substituted "structure" for "structures" in the last paragraph of the subsection.

Chapter 170, P. L. 1961, deleted "Alaska, Hawaii" and inserted "Puerto Rico" in subsection XVI. Chapter 361, P. L. 1961, added subsection XXII.

The 1963 amendment added "or any amounts received by volunteer firemen" near the end of paragraphs A and B of subsection XVII, added paragraph C of subsection XVII and added everything appearing after the word "employment" at the end of subsection XXII.

Only the paragraphs added or changed by the amendments are set out.

Effective date. — P. L. 1957, c. 447, amending this section became effective on its approval, May 8, 1958.

Scope of agricultural exemption.—In enacting P. L. 1957, c. 381, § 2, the legislature could have had no other purpose than to restrict the scope of the agricultural exemption to rather narrow limits, and until the exemption was again broadened by P. L. 1959, c. 222, the legislature intended that the words "on a farm in the employ of the operator of such farm" should be given a somewhat restricted meaning. C. M. T. Co. v. Maine Employment Security Comm., 156 Me. 218, 163 A. (2d) 369.

"Agricultural labor."—Employees, such as servicemen, pickup crews and grain crews, of a contract producer of poultry were held to be within the definition of "agricultural labor" and within the exemption contained in this section. Maplewood Poultry Co. v. Maine Employment Security Comm., 151 Me. 467, 121 A. (2d) 360, decided under the wording of subsection I of this section which was readopted by the 1959 amendment.

The services performed by employees who drove trucks to various farms on which poultry was located, caught, crated and transported the poultry from the farms to the processing plant, constituted "agricultural labor," as defined in subsection I. Drummond v. Maine Employment Security Comm., 157 Me. 404, 173 A. (2d) 353.

"Acquire the organization, trade or business".—The legislature in using the phrase, "acquire the organization, trade or business," in subsection IX, paragraph C, of this section, contemplated a situation in which there is continuity of the enterprise relatively uninterrupted by the transfer of ownership. The legislative concept was one of succession to and continuation of a business, ordinarily as a going concern. Stewart v. Maine Employment Security Comm., 152 Me. 114, 125 A. (2d) 83.

Petitioner did not "acquire the organization, trade, or business" from an estate, where he did not purchase or use the name, the good will, the cash or the accounts and notes receivable, and the leasehold estate which he acquired did not come from the estate but from the widow of the deceased, and he did not take over employees from the estate, but hired them individually. Stewart v. Maine Employment Security Comm., 152 Me. 114, 125 A. (2d) 83.

"Substantially all of the assets thereof."—In determining legislative intent with reference to the phrase, "substantially all of the assets thereof," in subsection IX, paragraph C, of this section, the supreme judicial court prefers to assign the literal meaning to the words employed and test the facts accordingly. Stewart v. Maine Employment Security Comm., 152 Me. 114, 125 A. (2d) 83.

Proof that one acquired "substantially all of the assets" of a business is not satisfied by mere conjecture or surmise as to what "all of the assets" consisted of at the time of acquisition. Stewart v. Maine Employment Security Comm., 152 Me. 114, 125 A. (2d) 83.

Relationships embraced within definition of "employment."—This statute, contains no mention of the terms "master," "servant" or "independent contractor." It is plain from its terms that the three concomitant conditions in subsection XI, paragraph E, bring under the definition of "employment" many relationships outside of the common law concepts of the relationship of master and servant. Hasco Mfg. Co. v. Maine Employment Security Comm., 158 Me. 413, 185 A. (2d) 442.

Three conditions must be met.—The three conditions set forth in paragraph E

of subsection XI must be met. To satisfy one or two, and not all three, leaves the relationship, for purposes of this chapter, one of "employment." Hasco Mfg. Co. v. Maine Employment Security Comm., 158 Me. 413, 185 A. (2d) 442.

"Control." — Control contemplated by paragraph E of subsection XI is general control, and the right to control may be sufficient even though it is not exercised. Hasco Mfg. Co. v. Maine Employment Security Comm., 158 Me. 413, 185 A. (2d) 442.

The burden rests upon the employer to establish exemption by meeting the conditions in (1), (2) and (3) of paragraph E, subsection XI. Hasco Mfg. Co. v. Maine Employment Security Comm., 158 Me. 413, 185 A. (2d) 442.

Conditions of paragraph E, subsection XI, held not to have been met.—See Hasco Mfg. Co. v. Maine Employment Security Comm., 158 Me. 413, 185 A. (2d) 442.

Pension payments are not "wages" within the meaning of subsection XVII of this section. Dubois v. Maine Employment Security Comm., 150 Me. 494, 114 A. (2d) 359.

A pension payment, characterized as "retirement separation pay," does not become a wage payment "with respect to" the weeks following retirement, merely because the amount of the pension payment is computed with respect to a contract formula relating to weekly wages during the last week of service. Dubois v. Maine Employment Security Comm., 150 Me. 494, 114 A. (2d) 359.

"Wages."—The word "wages" as used in this subsection XIX includes only that which comes from personal efforts. Malloch v. Maine Employment Security Comm., 159 Me. 105, 188 A. (2d) 892.

Benefits paid under a supplemental unemployment insurance plan maintained by the employer were not "wages" as used in subsection XIX, and did not disqualify an employee from receiving state benefits to the extent of such payments. Malloch v. Maine Employment Security Comm., 159 Me. 105, 188 A. (2d) 892.

Quoted in Hasco Mfg. Co. v. Maine Employment Security Comm., 158 Me. 413, 185 A. (2d) 442.

The Commission.

Sec. 4. Administrative organization.

II. Salaries. The chairman of the commission shall receive a fixed weekly salary, at the rate of $11,500 per year, and each of the other members shall receive a fixed weekly salary, at the rate of $11,000 per year, and shall be paid from the employment security administration fund. (1945, c. 367. 1949, c. 401, § 2. 1951, c. 412, § 7. 1955, c. 473, § 7. 1957, c. 418, § 8. 1959, c. 361, § 7. 1963, c. 200.)

III. Quorum. Any 2 commissioners shall constitute a quorum. Whenever the commission hears any case involving a disputed claim for benefits under this chapter, the impartial member of the commission shall act alone in the absence or disqualification of any other member, provided that in the event of illness or extended absence on the part of the impartial member or in the event of a vacancy in that position, the remaining members may act on appeals and conduct hearings and render a decision, provided both members agree. Except as hereinbefore provided, no vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission. (R. S. c. 24, § 10. 1945, c. 367. 1949, c. 401, § 2; c. 420, § 7; c. 430, § 1. 1951, c. 412, § 7. 1955, c. 473, § 7. 1957, c. 418, § 8. 1959, c. 361, § 7. 1963, c. 200; c. 413, § 3.)

Effect of amendments. — The 1955 amendment increased the salary of the chairman of the commission from $7,000 to $8,000 and of the other members from $6,500 to $7,500 per year.

The 1957 amendment, effective July 1, 1957, increased the salary of the chairman from $8,000 to $9,000 and of the other members from $7,500 to $8,450.

The 1959 amendment increased the salary of the chairman from $9,000 to $10,000 and of the other members from $8,450 to $9,450.

P. L. 1963, c. 200, increased the salary of the chairman from $10,000 to $11,500 and of the other members from $9,450 to $11,000 in subsection II. P. L. 1963, c. 413, § 3, rewrote the first sentence of subsection III by splitting it into two separate sentences and substituting the proviso at the end of the sentence for the language formerly appearing at the end.

As the rest of the section was not affected by the amendments, it is not set out.

Effective date. — P. L. 1959, c. 361.

amending this section, provided in section 14 thereof as follows: "The provisions of this act shall become effective for the week ending August 22, 1959."

Powers and Duties.

Sec. 5. Administration.

II. Regulations. The commission shall make, amend or rescind, after public hearing thereon, notice of which has been duly advertised in the state paper, reasonable regulations as required by this chapter. Such regulations shall become effective 10 days after a certified copy thereof has been filed with the secretary of state and notice of filing thereof shall be published in the state paper.

Any person aggrieved by any such regulation, or any act or order of the commission in enforcement thereof, may appeal to the superior court by filing a complaint within 30 days, and it shall fix a time and place of hearing and cause notice thereof to be given the commission; and after the hearing, the court may affirm or reverse the regulation, act or order of the commission. Said commission may waive the requirements of any such regulations under special circumstances or conditions.

The provisions of this subsection shall not apply to regulations of the commission governing its personnel. (1959, c. 317, § 10. 1961, c. 417, § 82)

V. Advisory council. The commission shall appoint a state advisory council consisting of not more than 9 members composed of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations and an equal number of members representing the general public. Such council shall meet no less than 4 times a year and shall aid the commission in formulating policies and discussing problems related to the administration of the provisions of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. Each member of the advisory council shall be compensated in the amount of $20 for each day in attendance upon a meeting of the council in addition to reimbursement for any necessary expenses; provided, however, that such compensation paid to any one member of the council shall not exceed the sum of $240 in any 1 fiscal year. (1947, c. 375, § 16. 1955, c. 350)

XIII. Regulations for filing payroll reports; penalty. The commission may prescribe regulations for the filing of payroll reports for the employing units in the state and the failure on the part of any employing unit to file the payroll reports within the time stated by the regulation of the commission shall render the employing unit liable to a penalty of $10, unless the delay was occasioned by the illness or death of the person in charge of the records of the employing unit or by other unavoidable accident which shall excuse the employing unit from said penalty. (1945, c. 198. 1955, c. 421, § 3)

XIV. Determination of employer or employment; appeal.—Upon the motion of the director of unemployment compensation or if a member of the commission is acting in the capacity upon the motion of a representative of the commission duly authorized by the commission to do or upon application of an employing unit and after giving notice, the commission may hold a hearing, make findings of fact and on the basis thereof, determine whether an employing unit constitutes an employer and whether services performed for or in connection with the business of an employing unit constitute employment. In the absence of appeal therefrom, the determination of the commission, together with the record of the proceeding under this subsection, shall be admissible in any subsequent material proceeding under this chapter, and if supported by evidence, and in the absence of fraud, shall be conclusive, except as to errors of law, upon any employing unit which was a party to the

proceeding under this subsection. Any such determination of the commission shall become final 10 days after the date of notification. If such notification is given by mail, it shall be registered and the date of receipt thereof by the employing unit shall control. Any employing unit aggrieved thereby shall have 15 days after the determination of the commission became final in which to perfect his appeal thereof and on such appeal the commission shall be deemed to be a party and may be represented by counsel. Such appeal shall be commenced by filing a complaint in the superior court of the county in which the employing unit has its principal place of business, a copy of which complaint shall be served upon the commission or upon such person as the commission may designate. With its answer, the commission shall certify and file with said court the original or certified copies of all documents and papers and a transcript of all testimony in the matter together with its findings of fact and decision therein. Upon the motion of any party to the appeal, the court may order additional testimony or evidence to be offered and upon the basis of all the evidence before him shall determine the issues. An appeal may be taken from the decision of the superior court to the supreme judicial court in the same manner as is provided in civil actions. [1949, c. 420, § 8. 1961, c. 317, § 47]. (R. S. c. 24, § 11. 1945, cc. 198, 210. 1947, c. 375, §§ 1, 16. 1949, c. 420, § 8; c. 430, § 1. 1951, c. 204, §§ 10, 11, 12. 1955, c. 350; c. 421, § 3. 1959, c. 317, § 10; 1961, c. 317, § 47; c. 417, § 82.)

Effect of amendments. — The first 1955 amendment substituted "shall" for "may" near the beginning of the first sentence of subsection V, inserted the words "shall meet no less than 4 times a year and" near the beginning of the second sentence of subsection V, and substituted "$20" for "$10" and "$240" for "$120" in the third sentence of subsection V. The second 1955 amendment changed the penalty provided in subsection XIII from $5 a day for the first day of delinquency and $1 for each day thereafter to $10.

The 1959 amendment rewrote the third sentence of subsection II.

P. L. 1961, c. 317, § 47, deleted "also" formerly preceding "acting" in the first sentence of subsection XIV, deleted "for judicial review" preceding "thereof" in the fifth sentence of such subsection, substituted "complaint" for "petition for review" near the beginning of the sixth sentence of such subsection, substituted "complaint" for "petition" near the end of such sixth sentence, substituted "appeal" for "review" in the eighth sentence of such subsection and substituted "actions" for "cases" at the end of the ninth sentence of such subsection. P. L. 1961, c. 417, § 82, deleted "a justice of" before "the superior court," substituted "filing" for "presenting to him" before "a complaint," substituted "it" for "he" and substituted "court" for "justice" in the third sentence of subsection II.

As the rest of the section was not affected by the amendments, it is not set out.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, c. 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Regulatory power of commission may not be exerted to change statute.—The regulatory power of the commission under this section may not be exerted to change, modify, extend or limit any law enacted by the legislature. Dubois v. Maine Employment Security Comm., 150 Me. 494, 114 A. (2d) 359.

Applied in Hasco Mfg. Co. v. Maine Employment Security Comm., 158 Me. 413, 185 A. (2d) 442.

Management of Funds.

Sec. 10. Withdrawals.—Moneys shall be requisitioned from the state's account in the unemployment trust fund solely for the payment of benefits and for the payment of refunds pursuant to subparagraph 2 of paragraph F of subsection XI of section 3 and section 19 in accordance with regulations prescribed by the

commission. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as it deems necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof the treasurer of state shall deposit such moneys in the benefit account and warrants shall be issued for the payment of benefits and refunds solely from such benefit account. All such warrants for the payment of benefits from the benefit account shall be prepared by and shall be signed by the chairman of the commission, and countersigned by the remaining 2 members of the commission, and when so signed and countersigned and delivered to the payee shall become a check against a designated bank or trust company acting as a depository of the state government. The commission shall be the sole judge of the legality or propriety of any award of benefits, or the amount thereof, appearing in any such warrant prepared by the chairman, subject only to the right of appeal as provided in subsections VIII and IX of section 16. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or, in the discretion of the commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in section 9. (R. S. c. 24, § 9. 1949, c. 430, § 1. 1955, c. 312, § 2. 1957, c. 381, § 10.)

Effect of amendments. — The 1955 amendment rewrote the fourth sentence and substituted "chairman" for "commission" near the end of the fifth sentence.

The 1957 amendment substituted "the remaining 2 members" for "a designated member" in the fourth sentence.

Benefits.

Sec. 13. Benefits.

II. Weekly benefit amount for total unemployment. On and after October 1, 1962, each eligible individual who is totally unemployed in any week shall be paid with respect to such week, benefits at the rate shown in column (C) of the schedule below on the line on which in column (A) there is indicated the individual's wage class and such rate shall be the individual's weekly benefit amount; and the maximum total amount of benefits payable to any eligible individual during any benefit year shall be the amount listed in column (D). The individual's wage class shall be determined by the total amount of wages paid to him for insured work, during his base period as shown in column (B).

Column A	Column B	Column C	Column D
1.	$ 400.00 up to $ 449.99	$ 9.00	$234.00
2.	450.00 up to 499.99	10.00	260.00
3.	500.00 up to 599.99	11.00	286.00
4.	600.00 up to 699.99	12.00	312.00
5.	700.00 up to 799.99	13.00	338.00
6.	800.00 up to 899.99	14.00	364.00
7.	900.00 up to 999.99	15.00	390.00
8.	1,000.00 up to 1,099.99	17.00	442.00
9.	1,100.00 up to 1,199.99	18.00	468.00
10.	1,200.00 up to 1,299.99	19.00	494.00
11.	1,300.00 up to 1,399.99	21.00	546.00
12.	1,400.00 up to 1,499.99	22.00	572.00
13.	1,500.00 up to 1,599.99	23.00	598.00
14.	1,600.00 up to 1,699.99	25.00	650.00
15.	1,700.00 up to 1,849.99	26.00	676.00
16.	1,850.00 up to 1,999.99	27.00	702.00
17.	2,000.00 up to 2,149.99	28.00	728.00
18.	2,150.00 up to 2,299.99	29.00	754.00
19.	2,300.00 up to 2,449.99	30.00	780.00
20.	2,450.00 up to 2,599.99	31.00	806.00
21.	2,600.00 up to 2,749.99	32.00	832.00
22.	2,750.00 up to 2,899.99	33.00	858.00
23.	2,900.00 and over	34.00	884.00

(1945, c. 301. 1947, c. 340. 1949, c. 291, § 1; c. 444. 1953, c. 327. 1955, c. 367. 1957, c. 341. 1961, c. 361, § 1.)

III. Weekly benefit for partial unemployment. On and after October 1, 1962, each eligible individual who is partially unemployed and whose earnings from his regular employment in any week are less than his weekly benefit amount shall be paid with respect to such week a partial benefit equal to the difference between such earnings, disregarding any fraction of a dollar earned, and his weekly benefit amount; except that an individual whose partial earnings are from employment other than where regularly employed shall be paid an amount equal to his weekly benefit amount less that part of his earnings paid, or payable to him, for such week which is in excess of $10, plus any fraction of a dollar, except that any amounts received by a volunteer fireman, or from the federal government by members of the national guard and organized reserve, including base pay and allowances, shall not be deemed to be wages for the purposes of this subsection. [1945, c. 285. 1949, c. 291, § 2. 1951, c. 204, § 15-A. 1953, c. 323, § 2; c. 326. 1955, c. 377. 1957, c. 344, § 2; c. 447, § 2. 1959, c. 305. 1961, c. 361, § 2. 1963, c. 413, § 4]. (R. S. c. 24, § 3. 1945, cc. 284, 285, 301. 1947, c. 340. 1949, c. 291, §§ 1, 2, 3; c. 430, § 1; c. 444. 1951, c. 204, § 15-A. 1953, c. 323, § 2; cc. 326, 327. 1955, cc. 367, 377. 1957, c. 341; c. 344, § 2; c. 447, § 2. 1959, c. 305. 1961, c. 361, §§ 1, 2. 1963, c. 413, § 4.)

Effect of amendments. — The first 1955 amendment, which became effective on its approval, May 17, 1955, substituted "1955" for "1953" near the beginning of subsection II and revised the schedule in subsection II. The second 1955 amendment, effective on its approval, May 19, 1955, rewrote subsection III.

The first 1957 amendment substituted "1957" for "1955" near the beginning of subsection II and revised the schedule in such subsection. The second 1957 amendment substituted "1957" for "1955" near the beginning of subsection III and deleted a former clause excepting holiday pay at the end of such subsection. The third 1957 amendment, which became effective on May 8, 1958, added an exception as to national guard and organized reserve members at the end of subsection III and substituted "1958" for "1957" at the beginning of the subsection.

The 1959 amendment substituted "1959" for "1958", at the beginning of subsection III and changed "$5" to "$10".

The 1961 amendment substituted "Oc-

tober 1, 1962" for "April 1, 1957" near the beginning of subsection II, revised the schedule in that subsection and again rewrote subsection III.

The 1963 amendment added "who is partially unemployed and" following "eligible individual" near the beginning of subsection III and added "disregarding any fraction of a dollar earned" following "such earnings" in subsection III.

As the rest of the section was not affected by the amendments, it is not set out.

Effective date.—P. L. 1957, c. 447, became effective on its approval, May 8, 1958.

Benefits paid under a supplemental unemployment insurance plan maintained by the employer were not wages within the meaning of subsection III, and did not disqualify an employee from receiving state benefits to the extent of such payments. Malloch v. Maine Employment Security Comm., 159 Me. 105, 188 A. (2d) 892.

Cited in Dubois v. Maine Employment Security Comm., 150 Me. 494, 114 A. (2d) 359 (sub-§ II); Drummond v. Maine Employment Security Comm., 157 Me. 404, 173 A. (2d) 353 (sub-§ II); Malloch v. Maine Employment Security Comm., 159 Me. 105, 188 A. (2d) 892 (sub-§ II).

Sec. 14. Benefit eligibility conditions.

III. Is able and available for work. He is able to work and is available for work at his usual or customary trade, occupation, profession or business or in such other trade, occupation, profession or business as his prior training or experience shows him to be fitted or qualified; and in addition to having complied with subsection II is himself actively seeking work. An individual shall be ineligible to receive benefits for any week or weeks which are recognized as a vacation period or for which he has received or is entitled to receive vacation pay; except that an individual who is not entitled to receive vacation pay for or during any such vacation week or weeks may qualify for benefits or credit for his waiting period if he is available for work and complies with the other conditions of eligibility. A female claimant shall be ineligible to receive benefits, or waiting period credit, if her unemployment is due to or as the result of pregnancy and, in addition, shall in any event be ineligible to receive benefits or waiting period credit for a period of 8 weeks immediately prior to the expected date of such individual giving birth to a child and within 4 weeks after the actual birth of her child; (1949, cc. 239, 371. 1953, c. 328. 1955, c. 421, § 4. 1957, c. 396. 1961, c. 361, § 3.)

IV. He has served a waiting period of 1 week of total or partial unemployment. Provided that this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment and provided further that the week immediately preceding a benefit year, if part of an uninterrupted period of unemployment which continued into such benefit year, shall be deemed, for the purpose of this subsection only, to be within such benefit year as well as within the preceding benefit year. Except as provided in this subsection, no week shall be counted as a week of total or partial unemployment for the purpose of this subsection:

A. Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

B. If benefits have been paid with respect thereto;

C. Unless the individual was eligible for benefits with respect thereto as provided in this section and section 15 except for the requirements of this subsection and of paragraph B of subsection V of section 15; (1945, c. 163. 1955, c. 421, § 5. 1957, c. 381, § 11.)

(1955, c. 421, §§ 4, 5. 1957, c. 381, § 11; c. 396; 1961, c. 361, § 3.)

Effect of amendments. — The 1955 amendment rewrote subsection III, inserted the second sentence of subsection IV, and added the words "Except as provided in this subsection" at the beginning of the third sentence of subsection IV.

The first 1957 amendment changed the reference in paragraph C of subsection IV from "paragraph C" to "paragraph B". The second 1957 amendment made former subsection III into four sentences, inserted all of the second sentence begin-

ning with "but no claimant" and inserted a sentence which was deleted in 1961.

The 1961 amendment, which amended subsection III, substituted "actively seeking work" for "making a reasonable effort to seek such work" at the end of the first sentence, rewrote the second sentence, deleting former provisions that eligibility should not be affected by illness occurring after registration and before the offer of suitable work, deleted the former third sentence as to evidence of such illness and rewrote the last sentence.

As the rest of the section was not changed by the amendments, only subsections III and IV are set out.

This act provides social insurance, for the common good as well as in the interest of the unemployed individuals, against the distress of involuntary unemployment for those individuals who have ordinarily been workers and would be workers now but for their inability to find suitable jobs. The provisions for eligibility and disqualification are purposed to preserve the fund for the payment of benefits to those individuals and to protect it against the claims of others who would prefer benefits to suitable jobs. The basic policy of the law is advanced as well when benefits are denied in improper cases as when they are allowed in proper cases. Lowell v. Maine Employment Security Comm., 159 Me. 177, 190 A. (2d) 271.

The test of availability for work is met if it appears that the individual is willing, able and ready to accept suitable work which he does not have good cause to refuse, that is when he is genuinely attached to the labor market. The determination entails primarily a probe of the claimant's good-faith intention to work. Dubois v. Maine Employment Security Comm., 150 Me. 494, 114 A. (2d) 359.

What claimant must establish. — To obtain benefits, a claimant must establish (1) eligibility under this section, and (2) that he is not disqualified under § 15 of this chapter. Lowell v. Maine Employment Security Comm., 159 Me. 177, 190 A. (2d) 271.

Refusal to accept work warrants inference of nonavailability.—Availability under subsection III of this section is interwoven with refusal to accept suitable work under subsection III of § 15 of this chapter. The refusal is a reason for disqualification for benefits of a claimant otherwise eligible and may warrant the inference of nonavailability, i.e., that the claimant is no longer genuinely attached to the labor market. Lowell v. Maine Employment Security Comm., 159 Me. 177, 190 A. (2d) 271.

Claimants having left employment and received retirement separation pay held "available for work." — Where claimants, who had left their employment and received "retirement separation pay" as provided by contract between their union and their employer, were advanced in years and no longer physically able to perform their customary tasks, but they were able and anxious to perform lighter work, and were seeking work from their employers and from others, and were registered and reporting regularly at the employment office and had not refused any offer of employment, they were "available" for work within the meaning of the subsection III of this section, and not being otherwise disqualified, they were eligible for benefits. Dubois v. Maine Employment Security Comm., 150 Me. 494, 114 A. (2d) 359.

Cited in Malloch v. Maine Employment Security Comm., 159 Me. 105, 188 A. (2d) 892.

Sec. 15. Disqualification for benefits.—An individual shall be disqualified for benefits:

I. Voluntarily leaves work. For the period of unemployment subsequent to his having retired, or having left his regular employment voluntarily without good cause attributable to such employment, or with respect to a female claimant who has voluntarily left work to marry, or to perform the customary duties of a housewife, or to leave the locale to live with her husband, or to a claimant who has voluntarily removed himself from the labor market where presently employed to an area where employment opportunity is less frequent, if so found by the commission, and disqualification shall continue until claimant has earned fifteen times his weekly benefit amount. In no event shall disqualification for voluntarily leaving regular employment be avoided by periods of other employment unless such other employment shall have continued for 4 full weeks; (1955, c. 376, § 1. 1957, c. 345. 1959, c. 341. 1961, c. 361, § 4.)

II. Discharge for misconduct. For the period of unemployment subsequent

to his having been discharged for misconduct connected with his work, if so found by the commission, and disqualification shall continue until claimant has earned 20 times his weekly benefit amount. The term misconduct shall include but not be limited to repeated absenteeism or tardiness after notice or warning, insubordination without provocation by the employer or his agent and disregard of the employer's interest, rules or regulations; (1955, c. 376, § 2. 1961, c. 361, § 5.)

III. Refused to accept work. If he has refused to accept an offer of suitable work for which he is reasonably fitted, or has refused to accept a referral to a suitable job opportunity when directed to do so by a local employment office of this state or another state or if an employer is unable to contact a former employee at last known or given address, for purpose of recall to employment; or the individual fails to respond to a call in card requesting him to report to the local office for the purpose of a referral to a suitable job, and the disqualification shall continue until claimant has earned 15 times his weekly benefit amount. For the purpose of this subsection, lack of transportation shall not be a valid excuse for refusal provided the work offered is suitable.

A. In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

B. Notwithstanding any other provisions of this chapter no work shall be deemed suitable and benefits shall not be denied under the provisions of this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout or other labor dispute;

2. If the wages, hours or other conditions of work are substantially less favorable to the individual than those prevailing for similar work in the locality;

3. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization. (1955, c. 376, § 3. 1961, c. 361, § 6. 1963, c. 413, § 5.)

IV. For any week with respect to which the commission finds that his total or partial unemployment is due to a stoppage of work which exists or existed because of a labor dispute at the factory, establishment or other premises at which he is or was employed. This subsection shall not apply if it is shown to the satisfaction of the commission that:

A. He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

B. He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

V. For any week with respect to which he is receiving, is entitled to receive or has received remuneration in the form of:

A. Dismissal wages or wages in lieu of notice or terminal pay or vacation pay; or

B. Benefits under the unemployment compensation or employment security law of any state or similar law of the United States.

C. Retirement pay or a pension paid, excluding a pension paid under Title II of the Federal Social Security Act, as amended, directly by the employer or paid indirectly by the employer through a trust fund, insurance or other media in the manner set forth in section 3, subsection XIX, paragraph B, but only if in addition to a retirement pay or a pension paid, he is also being paid a pension under Title II of the Federal Social Security Act, as amended.

If such remuneration under paragraphs A and C is less than the benefits which would otherwise be due under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration, provided that any fraction of a dollar included in the weekly remuneration received under paragraph C shall be disregarded; (1957, c. 381, § 12; c. 429, § 39. 1959, c. 334. 1961, c. 170, § 2; c. 361, §§ 8, 9.)

VI. Has falsified. For any week for which the deputy finds that the claimant made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in his application to obtain benefits and the disqualification shall continue until claimant shall have earned not less than $400 thereafter in subsequent employment. In addition, if the deputy finds that the claimant did in fact knowingly accept benefits to which he was not entitled, he shall find the claimant ineligible to receive any benefits for a further period of not less than 3 months nor more than one year. (1949, c. 420, § 1. 1951, c. 204, § 17. 1953, c. 317, § 1. 1955, c. 421, § 6. 1957, c. 381, § 13. 1961, c. 361, § 10.)

VII. Discharged for crime. For the period of unemployment next ensuing with respect to which he was discharged for conviction of felony or misdemeanor in connection with his work. The ineligibility of such individual shall continue for all weeks subsequent until such individual has thereafter earned not less than $400 in employment. [1955, c. 376, § 4. 1961, c. 361, § 11]. (R. S. c. 24, § 5. 1949, c. 420, § 1; c. 430, § 1. 1951, c. 204, §§ 16, 17. 1953, c. 317, § 1. 1955, c. 376, §§ 1-4; c. 421, § 6. 1957, c. 345; c. 381, §§ 12, 13; c. 429, § 39. 1959, cc. 334, 341. 1961, c. 170, § 2; c. 361, §§ 4-11. 1963, c. 413, § 5.)

Effect of amendments. — The first 1955 amendment rewrote subsections I and II and the first paragraph of subsection III and added subsection VII. The second 1955 amendment rewrote subsection VI.

The first 1957 amendment substituted "subsequent to his having left his regular employment voluntarily and" for "next ensuing after he has left his employment voluntarily" near the beginning of the first sentence of subsection I and added a second sentence which was deleted in 1961. The second 1957 amendment rewrote subsections V and VI. The third 1957 amendment substituted the words "Title II of the Federal Social Security Act, as amended" for the words "the Federal Insurance Contributions Act", formerly appearing in paragraph C of subsection V of this section.

This section was amended twice in 1959. The first 1959 amendment substituted a period for a semicolon at the end of paragraph B of subsection V, struck out the words "paragraph B of subsection XIX of", formerly appearing after the word "in" and before the word "section," in paragraph C of subsection V and added all of the language beginning with the words "subsection XIX," following the words "section 3", at the end of the paragraph. It also deleted the words "the provisions" and the words "the provisions of," formerly appearing in the last paragraph of subsection V. The second 1959 amendment substituted the figure "5" for the figure "7", in subsection I and substituted a semicolon for the period at the end of the subsection.

Chapter 170, P. L. 1961, added the proviso at the end of the last paragraph of subsection V. Chapter 361, P. L. 1961, again rewrote subsections I and II and the first paragraph of subsection III, divided the introductory paragraph of subsection IV into two sentences, inserted "or existed" following "exists" in the present first sentence of that paragraph, deleted "last" before "employed" near the end of that sentence, inserted "is entitled to receive" near the beginning of subsection V, inserted "or terminal pay or vacation pay"

in paragraph A of subsection V, again rewrote subsection VI and increased the amount to be earned from $300 to $400 in subsections VII.

The 1963 amendment added "suitable" before "job opportunity" in the first sentence of the first paragraph of subsection III.

Effective date.—P. L. 1957, c. 429, became effective on its approval, October 31, 1957.

What claimant must establish.—See same catchline in note to § 14 of this chapter.

Consideration to be given length of unemployment.—This section specifically requires that consideration be given to the factor of length of unemployment. No limitation upon the weight which shall be attached to this factor is to be found in the law. Lowell v. Maine Employment Security Comm., 159 Me. 177, 190 A. (2d) 271.

Refusal to accept work warrants inference of nonavailability.—See same catchline in note to § 15 of this chapter.

Refusal of jobs paying less compensation.—Although the applicant may continue to refuse jobs paying a lower rate of compensation, he must do so at his own expense rather than at the expense of the unemployment fund. The cushion of security between jobs provided by this act was not designed to finance an apparently hopeless quest for the claimant's old job or a job paying equal wages. What length of time should be regarded as sufficient to require this result is a question of fact. Lowell v. Maine Employment Security Comm., 159 Me. 177, 190 A. (2d) 271.

Suitability of work is a question of fact.—The question of the suitability of the work offered in a given case is one of fact. While a person may be justified in refusing as unsuitable, work offered to him immediately after his separation from his job, the situation may change after the lapse of a considerable time during which he has remained unemployed. Work which was unsuitable at the beginning of his unemployment may become suitable when consideration is given to the length of unemployment and the prospects of securing his accustomed work. Lowell v. Maine Employment Security Comm., 159 Me. 177, 190 A. (2d) 271.

Finding upheld.—Commission's finding that claimant had refused to accept an offer of suitable work upheld in Lowell v. Maine Employment Security Comm., 159 Me. 177, 190 A. (2d) 271.

Voluntary retirement is not "dismissal." —Where there is mere passive acquiescence by the employer in a voluntary retirement pursuant to a contractual retirement plan, there is no "dismissal" within the meaning of subsection V, A, of this section. Dubois v. Maine Employment Security Comm., 150 Me. 494, 114 A. (2d) 359.

Meaning of "stoppage of work." — The term "stoppage of work" refers generally to a cessation of plant operations. Bilodeau v. Maine Employment Security Comm., 153 Me. 243, 136 A. (2d) 522.

The "stoppage of work" is not sufficient in and of itself to deprive a person of his unemployment compensation unless this "stoppage of work" existed because of a labor dispute at the mill. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

The first paragraph of subsection IV of this section provides the individual is entitled to no benefits if the commission finds that the unemployment is due to a stoppage of work caused by a labor dispute. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

Subsection IV of this section provides that an individual is disqualified if his unemployment is due to a stoppage of work caused by a labor dispute where the individual was last employed, unless such individual was a nonparticipant and a nonmember of the grade and class of employee involved in such dispute as described in subsection IV, A and B. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

The legislature has said in words of unmistakable meaning that if the employee loses his employment and income incident thereto because of a work stoppage caused by a labor dispute and he actively participates in this labor dispute, he is not entitled to receive employment compensation as a result of the stoppage of work occasioned by the dispute. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

On the other hand, if he suffers loss of income because of the work stoppage and is free of participation in the labor dispute causing it, he should be permitted to qualify for unemployment benefits. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

Meaning of "labor dispute." — "Labor dispute" broadly includes any controversy concerning the terms or conditions of employment or arising out of the respective interests of employer and employee. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

The State of New Jersey has in its Unemployment Compensation Act a provision practically identical to subsection IV of this section. In the case of Gerber v. Board of Review, etc., 36 N. J. Super. 322, 115 A. (2d) 575, the question of definition of the term "labor dispute" arose. The court said on page 578:

"The term broadly includes any controversy concerning terms or conditions of employment or arising out of the respective interests of employer and employee." Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

On April 15, 1953 the union and the employer entered into a written contract, this contract to continue in force until April 15, 1955. Previous to termination date, the parties attempted negotiations of a new contract but were unsuccessful in their efforts, so on April 15, 1955 the contract terminated without replacement by a new one. There existed an inability on the part of the employer and union to agree on conditions affecting both labor and management. In other words, there arose a dispute in which labor was vitally concerned, particularly as to fringe benefits and wages. Under these facts there existed a labor dispute which was the primary cause of the work stoppage. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

Meaning of "new work." — The work made vacant by a strike is not "new work" within the meaning of subsection III, B, 1, of this section; the work made vacant by a strike is "new work" only to strangers to the strike. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

Subsections III and IV construed.—The legislature did not intend subsection III, B, 1 of this section to operate in direct contradiction to subsection IV of this section. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

It was the obvious intention of the legislature in enacting subsection IV of this section to make a rule which would govern the payment of benefits to individuals who found themselves without employment because of stoppage of work occasioned by a labor dispute. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

It is apparent that the legislature understood there would be cases whereby an employee would suffer loss of employment income as a result of the stoppage of work because of a labor dispute wherein he had no participation, either directly or indirectly. Under these circumstances the legislature, not desiring to unjustly withhold benefits from an employee, established exceptions to the general rule so that even though the work stoppage was caused by a labor dispute, the employee who did not participate in the financing or was not directly interested in the labor dispute which caused the stoppage of work could receive benefits. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

The exceptions provide that he must not belong to a grade or class of workers which were participating in financing or directly interested in the dispute. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

Claimant's burden of proof.—The claimant in order to relieve himself of disqualification has the burden of proving to the satisfaction of the commission that he (1) did not participate in or finance or was not directly interested in the labor dispute; (2) that he did not belong to a grade or class of workers which immediately before the commencement of the stoppage of work were members employed at the premises at which the stoppage occurred, any of whom were participating in financing or directly interested in the dispute. Bilodeau v. Maine Employment Security Comm., 153 Me. 254, 136 A. (2d) 522.

Termination payments in lieu of notice and pension payments distinguished.— Termination payments in lieu of notice are payments for the period with respect to which an employer would give advance notice of his intention to dismiss an employee, and are distinguishable from pension payments. Dubois v. Maine Employment Security Comm., 150 Me. 494, 114 A. (2d) 359.

Sec. 16. Claims for benefits.

II.

The deputy shall promptly notify the claimant and any other interested party of the determinations and reasons therefor. Unless the claimant or any such interested party, within 7 calendar days after such notification was mailed to his last known address, files an appeal from such determination, such determination shall be final and benefits shall be paid or denied in accordance therewith; provided, however, if new evidence or pertinent facts that would alter such de-

termination become known to the deputy prior to the date such determination becomes final, a redetermination is authorized, but such redetermination must be mailed before the original determination becomes final. If an appeal is duly filed, benefits with respect to the period of any possible disqualification involved shall be paid only after the final determination of the commission. If an appeal tribunal affirms a determination of a deputy or the commission affirms a determination of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such determination is finally reversed, no employer's account shall be charged with benefits so paid. If an appeal tribunal disqualifies a claimant for a specified period of time, benefits shall be paid following the expiration of the period of disqualification if the claimant is otherwise qualified to receive them, regardless of any appeal which may thereafter be taken. If the claimant's appeal relates to the weekly benefit amount or maximum benefit amount potentially payable to him in the benefit year, benefits may nevertheless be paid to the extent of the deputy's determination and prior to the final determination of the commission. (1945, c. 164. 1947, c. 375, § 2. 1949, c. 420, §§ 2, 3. 1957, c. 381, § 14. 1959, c. 176.)

VII. Witness fees. Witnesses subpoenaed pursuant to this chapter shall be allowed fees at a rate fixed by the commission to be paid out of the employment security administration fund, except that no attendance or mileage fee shall be due or payable when a subpoena is issued to compel an employing unit to appear and produce records and reports for the purpose of making a determination as to liability or for the purpose of completing routine reports as provided under this chapter. (1963, c. 413, § 6.)

IX. Appeal. Within 15 days after the decision of the commission has become final, any party aggrieved thereby may appeal by commencing an action in the superior court of Kennebec county against the commission for the appeal of its decision, in which action any other party to the proceedings before the commission shall be made a defendant. In such action, a complaint which need not be verified, but which shall state the grounds upon which an appeal is sought, shall be served upon the commission or upon such person as the commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the complaint as there are defendants and the commission shall forthwith mail one such copy to each such defendant. With its answer, the commission shall certify and file with said court the original or certified copies of all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The commission may, in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this chapter, the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil actions except actions arising under the workmen's compensation law of this state. An appeal may be taken from the decision of the superior court of Kennebec county to the supreme judicial court of the state, in the same manner, but not inconsistent with this chapter, as is provided in civil actions. It shall not be necessary, in any judicial proceeding under this section, to enter objections to the rulings of the commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the commission shall enter an order in accordance with such determination. An appeal shall not act as a supersedeas or stay unless the commission shall so order. (1945, c. 105. 1961, c. 317, § 48.)

X. Determination may be reconsidered; appeal. The commission may reconsider a determination with respect to the weekly benefit amount and maxi-

mum total amount of benefits for a claimant for any given benefit year, if it finds that an error in computation or identity has occurred in connection therewith, or that wages have been erroneously reported, but no such redetermination shall be made after one year from the date of the original determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination. If the maximum amount of benefits is increased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase may be filed in the manner and subject to the limitations provided in subsection II of this section. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to an appeal by claimant with respect to subsequent benefits which may be affected by the redetermination. An appeal may be filed in the manner and subject to the limitations provided in subsection II of this section.

The commission may reconsider a benefit payment for any particular week or weeks whenever it finds that an error in computation or identity has occurred in connection therewith or that earnings were erroneously reported, but no such redetermination may be made after one year from the date of payment for such week or weeks. Notice of any such redetermination shall be promptly given to the claimant. Unless the claimant files an appeal from such redetermination within 7 calendar days after such notification was mailed to his last known address such redetermination shall be final and benefits shall be paid or denied in accordance therewith.

Subject to the same limitations and for the same reasons, the commission may reconsider the determination in any case in which the final decision has been rendered by an appeal tribunal, the commission or a court, and may apply to the body or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination. (1955, c. 421, § 7. 1957, c. 381, § 15. 1961, c. 317, § 49.)

XI. Repealed by Public Laws 1957, c. 381, § 16. (R. S. c. 24, § 6. 1945, cc. 105, 164, 165, 192. 1947, c. 375, §§ 2, 3, 7. 1949, c. 420, §§ 2, 3; c. 430, § 1. 1955, c. 421, § 7. 1957, c. 381, §§ 14-16. 1959, c. 176. 1961, c. 317, §§ 48, 49. 1963, c. 413, § 6.)

Effect of amendments. — The 1955 amendment rewrote subsection X.

The 1957 amendment deleted "within 5 calendar days after the delivery of such notification, or" formerly appearing near the beginning of the second sentence of the fourth paragraph of subsection II and added the proviso to said sentence, deleted "5 calendar days from delivery or" formerly appearing in the third sentence of the second paragraph of subsection X, and repealed former subsection XI.

The 1959 amendment divided the former third sentence of the last paragraph of subsection II into the present third, fourth and sixth sentences and inserted the present fifth sentence in that paragraph.

The 1961 amendment rewrote subsection IX of this section and deleted "review in connection with" formerly preceding "an appeal" in next to the last sentence of the first paragraph of subsection X.

The 1963 amendment deleted "the provisions of" before "this chapter" and added the exception to subsection VII.

Only the subsections or parts of subsections changed by the amendments are set out.

Commission's findings of fact are conclusive.—By the terms of this section, the commission's findings of fact, when supported by any credible evidence, are conclusive. Lowell v. Maine Employment Security Comm., 159 Me. 177, 190 A. (2d) 271.

And judicial review is limited to the correction of errors of law. When the commission decides facts contrary to all of the credible evidence in the case, it has committed an error of law. When no dispute as to the facts exists or is possible upon all the evidence, the question becomes one of law. Lowell v. Maine Employment Security Comm., 159 Me. 177, 190 A. (2d) 271.

Applied in Dubois v. Maine Employment Security Comm., 150 Me. 494, 114 A. (2d) 359 (sub-§ IX); Malloch v. Maine Employment Security Comm., 159 Me. 105, 188 A. (2d) 892 (sub-§ IX).

Contributions. Employer's Coverage.

Sec. 17. Contributions.

IV. Employer's experience classifications.

B. Subject to the provisions of the preceding paragraph, each employer's contribution rate for the 12-month period commencing July 1 of each year shall be based upon his experience rating record and determined from his reserve ratio, which is the percent obtained by dividing the amount by which, if any, his contributions credited from the time he first or most recently became an employer, whichever date is later, and up to and including December 31 of the preceding year (including any part of his contributions due for that year payable on or before January 31 of the current year) exceed his benefits charged during the same period, by his average annual payroll for the 36-consecutive-month period ending December 31 of the preceding year. His contribution rate is the percent shown on the line of the following table on which in column A there is indicated his reserve ratio and under the column within which the amount in the fund falls as of the computation date.

Employer's Contribution Rate in Percent of Wages

Column A Reserve Ratio		B	C	D	E	F
				Amount in Fund in Millions		
Equal to or more than	Less than	Over 35	Over 30 not over 35	Over 25 not over 30	Over 20 not over 25	Under 20
—	5%	2.7%	2.7%	2.7%	2.7%	2.7%
5%	6%	2.4%	2.5%	2.6%	2.7%	2.7%
6%	7%	2.1%	2.3%	2.5%	2.7%	2.7%
7%	8%	1.9%	2.2%	2.4%	2.6%	2.7%
8%	9%	1.8%	2.1%	2.3%	2.5%	2.7%
9%	10%	1.6%	1.9%	2.2%	2.4%	2.7%
10%	11%	1.5%	1.8%	2.1%	2.3%	2.7%
11%	12%	1.3%	1.6%	1.9%	2.2%	2.7%
12%	13%	1.2%	1.5%	1.8%	2.1%	2.7%
13%	14%	1.1%	1.3%	1.6%	2.0%	2.7%
14%	15%	1.0%	1.2%	1.5%	1.9%	2.7%
15%	16%	0.9%	1.1%	1.4%	1.8%	2.7%
16%	17%	0.8%	1 %	1.3%	1.7%	2.7%
17%	18%	0.7%	.9%	1.2%	1.6%	2.7%
18%	19%	0.6%	.8%	1.1%	1.5%	2.7%
19% and over		0.5%	.7%	1 %	1.4%	2.7%

The contribution rates provided by this paragraph shall be retroactive to July 1, 1957. (1949, c. 240, § 2; c. 420, § 5. 1957, c. 268; c. 381, § 22)

C. Repealed by Public Laws 1955, c. 421, § 8.

D. If at any time, in the opinion of the commission, an emergency exists such as to seriously impair the fund, the commission may, after reasonable notices and public hearing, forthwith re-establish all rates at 2.7% and continue said rates in force until, in the opinion of the commission, such emergency no longer exists, or until the date set by this chapter for the computation of rates. (1959, c. 320.)

F.

1. Shall promptly notify each employer of his rate of contributions as

determined for the 12-month period commencing July 1st of each year pursuant to this section. Such determination shall become conclusive and binding upon the employer unless, within 15 days after the mailing of notice thereof to his last known address or in the absence of mailing, within 15 days after the delivery of such notice, the employer files an application for review and redetermination, setting forth his reasons therefor. If the commission grants such review, the employer shall be promptly notified thereof and shall be granted an opportunity for a hearing, but no employer shall have standing, in any proceedings involving his rate of contributions or contribution liability, to contest the chargeability to his "experience rating record" of any benefits paid in accordance with a determination, redetermination or decision pursuant to section 16 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination or decision or to any other proceedings under this chapter in which the character of such services was determined. The employer shall be promptly notified of the commission's denial of his application, or of the commission's redetermination, both of which shall become final unless within 15 days after the mailing of notice thereof to his last known address or in the absence of mailing, within 15 days after the delivery of such notice, an appeal is taken by filing a complaint in the superior court of Kennebec county, state of Maine. In any proceedings under this section the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. No additional evidence shall be received by the court but the court may order additional evidence to be taken before the commission and the commission may, after hearing such additional evidence, modify its determination, and file such modified determination, together with a transcript of the additional record, with the court. Such proceedings shall be heard in a summary manner and shall be given precedence over all other civil actions except actions arising under section 16 and the workmen's compensation law of this state. An appeal may be taken from the decision of the superior court of Kennebec county to the supreme judicial court of Maine in the same manner, but not inconsistent with this chapter, as is provided in civil actions; (1953, c. 317, § 2. 1961, c. 317, § 50)

2. The commission shall provide each employer at least monthly with a notification of benefits paid and chargeable to his experience rating record and any such notification, in the absence of an application for redetermination filed in such manner and within such period as the commission may prescribe, shall become conclusive and binding upon the employer for all purposes. Such redetermination, made after notice and opportunity for hearing, and the commission's findings of facts in connection therewith, may be introduced in any subsequent administrative or judicial proceedings involving the determinination of the rate of contributions of any employer for the 12-month period commencing July 1 of any year and shall be entitled to the same finality as is provided in this section with respect to the findings of fact made by the commission in proceedings to redetermine the contribution rates of an employer. (1953, c. 317, § 3. 1955, c. 421, § 9)

G. Notwithstanding any other inconsistent provision of law, any employer, who has been notified of his rate of contribution, as required by subparagraph 1 of paragraph F of this subsection, for any year commencing July 1, may voluntarily make payment of additional contributions, and, upon such payment, shall promptly receive a recomputation and renotification of his contribution rate for such year, including in the calculation the additional

contributions so made. Any such additional contribution shall be made during the 30-day period following the date of the mailing to the employer of such notice of his contribution rate in any year, unless, for good cause, the time of payment has been extended by the commission for not to exceed an additional 10 days. (1955, c. 296. 1957, c. 381, § 17)

(1955, c. 296; c. 421, §§ 8, 9. 1957, c. 268; c. 381, §§ 17, 22. 1959, c. 320. 1961, c. 317, § 50.)

Effect of amendments. — The first 1955 amendment added paragraph G to subsection IV. The second 1955 amendment repealed paragraph C of subsection IV and rewrote the first clause of the first sentence of subparagraph 2 of paragraph F of subsection IV.

The first 1957 amendment added the contribution rates on reserve ratios of "16%" to "19% and over" at the end of the table in paragraph B of subsection IV. The second 1957 amendment deleted "for the year commencing July 1, 1955, or" formerly appearing in the first sentence and substituted "30-day period" for the former "10-day period" in the second sentence of paragraph G of subsection IV, and added the last sentence to paragraph B of subsection I.

The 1959 amendment rewrote paragraph D of subsection IV of this section.

The 1961 amendment rewrote subparagraph 1 of paragraph F of subsection IV of this section.

As the rest of the section was not changed by the amendments, only paragraph B, subparagraphs 1 and 2 of paragraph F, and paragraphs D and G of subsection IV are set out.

Repeal of paragraph C, subsection IV, did not operate to remit taxes accrued under the repealed section even though no saving clause was enacted. Maine Employment Security Comm. v. Charest, 158 Me. 43, 177 A. (2d) 654.

Applied in Maine Employment Security Comm. v. Charest, 158 Me. 43, 177 A. (2d) 654 (sub-§ II).

Cited in Malloch v. Maine Employment Security Comm., 159 Me. 105, 188 A. (2d) 892.

Sec. 18. Period, election and termination of employer's coverage.

II. Termination of employer's coverage.

A. Except as otherwise provided in subsection III of this section, an employing unit shall cease to be an employer subject to the provisions of this chapter as of the 1st day of January of any calendar year, only if it files with the commission, prior to the 31st day of January of such year, a written application for termination of coverage, and the commission finds that there were no 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed 4 or more individuals in employment subject to the provisions of this chapter. For the purpose of this subsection, the two or more employing units mentioned in paragraph B or C or D of subsection IX of section 3 shall be treated as a single employing unit. (1955, c. 421, § 10. 1957, c. 381, § 18)

B. The commission may upon its own motion terminate coverage of any employer when the commission finds that there were no 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed 4 or more individuals in employment subject to the provisions of this chapter; and the commission may, upon its own motion terminate the coverage of an employing unit which had become an employer by virtue of the provisions of subsection III of this section, as of January 1 of any calendar year when such employing unit has, by virtue of approval of its election to become a subject employer, been such a subject employer for the two or more preceding calendar years. (1947, c. 375, § 13. 1955, c. 421, § 10)

III. Election and termination of employer's coverage.

A. An employing unit, not otherwise subject to the provisions of this chapter, which files with the commission its written election to become an employer subject hereto for not less than 2 calendar years, shall, with the written approval of such election by the commission, become an employer sub-

ject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1st of any calendar year subsequent to such 2 calendar years, only if it files with the commission, prior to the 31st day of January of such year, a written application for termination of coverage. (1945, c. 116. 1957, c. 381, § 19)

B. Any employing unit, for which services that do not constitute employment as defined in this chapter are performed, may file with the commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than 2 calendar years. Upon the written approval of such election by the commission, such services shall be deemed to constitute employment subject to the provisions of this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1st of any calendar year subsequent to such 2 calendar years, if not later than January 31st of such year such employing unit has filed with the commission an application for termination of coverage. [1945, c. 176]. (R. S. c. 24, § 8. 1945, cc. 116, 176. 1947, c. 375, § 13. 1949, c. 430, § 1. 1955, c. 421, § 10. 1957, c. 381, §§ 18, 19.)

Effect of amendments. — The 1955 amendment substituted the figure 4 for the figure 8 in line seven of paragraph A of subsection II and in line four of paragraph B of subsection II.

The 1957 amendment substituted January 31st for January 20th in paragraph A of subsection II and also in paragraphs A and B of subsection III.

As the rest of the section was not changed by the amendments, only subsections II and III are set out.

Sec. 19. Collection of contributions.—

I. Interest on past-due contributions. Contributions, unpaid on the date on which they are due and payable as prescribed by the commission, shall bear interest at the rate of ½ of 1% per month from and after such date until payment is received by the commission. In such cases of delinquency as are shown to the satisfaction of the commission to arise from reasonable questions of liability under the terms of this chapter, the commission may, in its discretion, abate not exceeding 75% of the interest imposed. (1945, c. 166. 1953, c. 317, § 4. 1957, c. 381, § 20)

I-A. Penalty on past-due contributions. In the event quarterly contributions are not paid when due, the commission shall assess a penalty of 5% of the amount of the contributions but such penalty shall not be less than $5 nor more than $100. The commission may waive such penalty if it finds that the delay was occasioned by the illness or death of the person in charge of the records of the employing unit or by other unavoidable accident which shall excuse the employing unit from said penalty. Provided, however, an extension of time up to 30 days beyond the due date may be allowed by the commission for good cause upon written request made on or before the due date. (1955, c. 421, § 11)

V. Payments.

C. Upon the failure of an employer to pay the amount assessed pursuant to this section, the commission may file with the register of deeds in any county where the employer has real property or with the town or city clerk where the employer has his principal place of business, a certificate under its official seal, stating: (a) the name of the employer; (b) his address; (c) the amount of the contributions and interest assessed and in default; and (d) that the time in which an appeal is permitted pursuant to subsection VII has expired without such appeal having been taken, or that delay will jeopardize collection, and when such certificate is duly filed and recorded, the amount of the assessment shall be a lien upon the entire interest of the employer, legal or equitable, in any real or tangible personal property, situated within the jurisdiction of the office in which such certificate was filed.

The priority of said liens shall be governed by the same rules as apply to that of a lien for taxes under the laws of this state. Said liens shall be subordinate to any real estate mortgage previously recorded as required by law. No lien for contributions or interest shall be valid against one who purchases personal property from the employer in the usual course of his business in good faith and without actual notice of such lien. Such lien may be enforced against any real or personal property by a civil action in the name of the commission. Such action shall be begun by writ of attachment commanding the officer serving it to specially attach the property upon which the lien is claimed. The commission shall discharge any such lien upon receiving from any such employer against whose property a lien certificate has been filed a good and sufficient bond with sureties conditioned upon the payment of the amount of contributions and interest as finally determined, together with any additional amount which may have become due or may have accrued under this chapter and costs of court, if any. The foregoing remedies shall be in addition to all other remedies. (1949, c. 420, § 11. 1961, c. 317, § 51)

VI. Hearings before commission. Upon appeal from an assessment, the commission shall, after affording the appellant and the commission's designated representative a reasonable opportunity for a fair hearing, make finding of facts and render its decision which may affirm, modify or reverse the action of its designated representative. The conduct of such hearings shall be governed by rules of the commission consistent with the provisions of subsection VI of section 16. The commission shall promptly notify the parties to the proceeding of its finding of facts and decision and such decision shall be final unless within 15 days after the mailing of notice thereof to a party's last known address or, in the absence of such mailing, within 15 days after the delivery of such notice, an appeal is initiated by such party pursuant to subsection VII. (1949, c. 420, § 11. 1961, c. 317, § 52)

VII. Appeal. Within the time provided in subsection VI, any party to the proceedings before the commission may appeal by filing in the superior court of the county in which the employer has his principal place of business in this state, a complaint and in such proceeding, any party to the proceeding before the commission shall be made a party thereto. The complaint need not be verified, but shall state the ground upon which such appeal is sought. A copy of the complaint shall be served upon the commission or upon such person as it may designate. Thereupon the commission shall cause to be certified and filed with the court, a copy of the record of the action, including all documents and papers and a transcript of all testimony taken in the matter, together with the commission's findings, and decision therein. Upon the motion of any party, the court may order additional testimony or evidence to be offered and upon the basis of all the evidence before it shall determine the assessment. An appeal may be taken from the decision of said court to the supreme judicial court in the same manner, but not inconsistent with this chapter, as is provided in civil actions. It shall not be necessary as a condition precedent to an appeal from any decision of the commission to enter exceptions to the rulings of the commission. As a condition of initiating a proceeding for appeal from the proceedings before the commission, or of entering an appeal from the decision of the superior court, the court may require that an employing unit make payment of the amount of contributions or interest adjudged to be due by the commission or by such court, respectively, together with the cost assessed, if any, or file an approved bond or other appropriate security, in a sum fixed by such court, conditioned upon the payment of the amount of contributions and interest as finally determined, together with any additional amounts which may have become due or may have accrued under this chapter and costs assessed by such court. Upon the final termination of judicial proceedings, the commission shall

enter an order in accordance with the mandate of the court. (1949, c. 420, § 11. 1951, c. 266, § 30. 1961, c. 317, § 53)

(1955, c. 421, § 11. 1957, c. 381, § 20. 1961, c. 317, §§ 51-53.)

Effect of amendments. — The 1955 amendment added the above subsection I-A after subsection I of this section.

The 1957 amendment made a former proviso of subsection I into a separate sentence and substituted "½ of 1%" for "1%" in the present first sentence.

The 1961 amendment substituted "an appeal" for "a judicial review" near the beginning of clause (d) of the first sentence of paragraph C of subsection V, divided the former second sentence into two sentences, substituted "a civil action" for "an action of debt" in the present fifth sentence and made other minor changes in the subsection. The 1961 amendment also substituted "an appeal" for "a proceeding for judicial review" near the end of the last sentence of subsection VI and rewrote subsection VII.

As the rest of the section was not affected by the amendments, it is not set out.

Refunds must be made in accordance with terms of section.—Taxes voluntarily paid cannot be refunded unless a statute so provides and thus refunds of money paid into the unemployment fund can only be made in accordance with the terms of this section. Drummond v. Maine Employment Security Comm., 157 Me. 404, 173 A. (2d) 353.

Thus, the commission has no authority or legal right to refund the total amount of contributions, but only those amounts which remain after deducting the benefits paid. Drummond v. Maine Employment Security Comm., 157 Me. 404, 173 A. (2d) 353.

And the fact that benefits are erroneously and illegally paid to the recipients matters not, as this section makes no provisions for such circumstances and the commissioners' refunding power cannot exceed the authority as defined in the statutes. Drummond v. Maine Employment Security Comm., 157 Me. 404, 173 A. (2d) 353.

Applied in Maine Employment Security Comm. v. Charest, 158 Me. 43, 177 A. (2d) 654.

Quoted in Maine Employment Security Comm. v. Charest, 158 Me. 43, 177 A. (2d) 654.

Seasonal Employment.

Sec. 21. Seasonal workers.—

I. As used in this section the term "seasonal industry" means an industry in which, because of the seasonal nature thereof it is customary to operate only during a regularly recurring period or periods of less than 40 weeks in a calendar year. The commission shall, after investigation and hearing, determine, and may thereafter from time to time redetermine, the longest seasonal period or periods during which, by the best practice of the industry in question, operations are conducted. Until such determination by the commission, no industry shall be deemed seasonal. (1957, c. 381, § 21)

Effect of amendment. — The 1957 amendment deleted "occupation or" formerly appearing in three places in subsection I. As subsection II was not changed by the amendment, it is not set out.

Penalties.

Sec. 28. Penalties.

V. Refusal to repay erroneous payments. If, after due notice, any person refuses to repay amounts erroneously paid to him as unemployment benefits, the amount due from such person may be collected by a civil action with account annexed brought in the name of the commission or in the discretion of the commission the amount erroneously paid to such person may be deducted from any future benefits payable to him under this chapter. (R. S. c. 24, § 16. 1949, c. 430, § 1. 1951, c. 204, §§ 21, 22. 1961, c. 317, § 54.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action in assumpsit" in subsection V of this section and deleted "the provisions of" formerly preceding "this chapter" at the end of such subsection.

As the rest of the section was not affected by the amendment, it is not set out.